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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFERY M. ENRIGHT

Appeal 2008-004397
Application 09/991,748
Technology Center 3600

Decided: September 22, 2009

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jeffery M. Enright (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-39. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We note that appeals numbered 2007-000069 and 2007-003366 are related.

SUMMARY OF DECISION

We AFFIRM-IN-PART. [1]

THE INVENTION

The claimed invention relates to transaction record systems.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

> 1. A method comprising:
>
> (a) providing in an automated banking machine a document requiring a signature to achieve a legal effect;
>
> (b) receiving at least one input from a user of the machine indicative that the user agrees that the user's electronic signature shall include data corresponding to at least one image of at least a portion of the user;
>
> (c) acquiring the data corresponding to at least one image of the user through operation of the machine.

[1] Our decision will make reference to the Appellant's Supplemental Appeal Brief ("App. Br.," filed Jun. 21, 2007) and Reply Brief ("Reply Br.," filed Dec. 7, 2007), and the Examiner's Answer ("Answer," mailed Oct. 9, 2007).

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Stinson	US 6,149,056	Nov. 21, 2000

The following rejection is before us for review:

1. Claims 1-39 are rejected under 35 U.S.C. §102(e) as being anticipated by Stinson.

ISSUE

The issue before us is whether the Appellant has shown that the Examiner erred in rejecting claims 1-39 under 35 U.S.C. §102(e) as being anticipated by Stinson.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

Claim construction

1. The Specification does not contain an express definition of "electronic signature."
2. The Specification states that a user's image may serve as an electronic signature. Specification 66:6-7
3. A definition of "electronic signature" is "an electronic sound, symbol, or process attached to or associated with a contract or other record and used as the legal equivalent of a written

signature." The American Heritage® Dictionary of the English Language,(4th Ed. 2004), http://dictionary.reference.com/browse/e-signature. (Accessed: September 16, 2009).

4. Claim 2 (d) recites "applying indicia corresponding to the at least one image to the document."

5. The Specification does not contain an express definition of "applying."

6. The Specification describes using a marking device to apply the indicia. Specification 69:12-14.

7. A definition of "apply" is "to lay or spread on." (*See Merriam-Webster's Collegiate Dictionary* 57 (10th Ed. 1993) (Entry for "apply").

Stinson

8. Stinson describes an automated check cashing unit 100. Col. 5, ll. 14-15.

9. Stinson describes that the check cashing unit includes a pair of digital video cameras 125 (col. 5, ll. 20), a processor 300 (col. 5, ll. 50-51), and an ATM 350 (col. 6, ll. 13). *See also* col. 5, ll. 33-36.

10. Stinson describe a customer inputting a social security number or other ID number. Col. 7, ll. 40-42.

11. Stinson describe a customer inserting an endorsed check into the check cashing unit. *See* Col. 7, ll. 46-48.

12. Stinson describes the check cashing unit 100 returning a check, which is not endorsed, to the customer. Col. 7, ll. 55-57.

13. Stinson describes using the cameras to take an image of the customers face (Col. 8, ll. 7-9 and Col. 8, ll. 23-24), which would include an eye with an iris.
14. Stinson describes that using an image of the customer's face to verify identify is know as facial biometrics. Col. 4, ll. 3-7 and col. 8, ll. 14-16.
15. Stinson depicts in Fig. 16C a display asking the customer to remove a hat or sunglass and to press an "OK" button before taking the image.
16. In Stinson, the check remains in the check cashing unit for a completed approved transaction. *See* Col. 9, ll. 15-18 and Figs. 6A-6B.
17. Stinson describes that when initiating a call to a customer service center, the processor 300 sends the customer service center server 500 a packet including the customer's social security number, images of the front and back of the check, MICR information, the check amount read by OCR, the check amount entered by the customer and an image of the customer. Col. 9, ll. 49-63.
18. Stinson does not describe the check cashing unit applying any indicia to the check.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, a pending claim is given the broadest reasonable construction consistent with the specification and

should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

> [W]e look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation. As this court has discussed, this methodology produces claims with only justifiable breadth. *In re Yamamoto,* 740 F.2d 1569, 1571 (Fed.Cir.1984). Further, as applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee. *Am. Acad.,* 367 F.3d at 1364.

In re ICON Health and Fitness, Inc., 496 F.3d 1374, 1379 (Fed. Cir. 2007). Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

The rejection of claims 1-39 *under §102(e) as being anticipated by Stinson.*

Claim 1

The Appellant argues that Stinson does not anticipate claim 1 because Stinson does not describe the steps of 1) receiving at least one input from a user of the machine indicative that the user agrees that the user's electronic signature shall include data corresponding to at least one image of at least a

portion of the user and 2) acquiring the data corresponding to at least one image of the user through operation of the machine. App. Br. 18-19 and Reply Br. 4-5.

With regards to the first step, the Appellant argues that Stinson does not describe a) an electronic signature because in Stinson the user signs the check in ink (*See* App. Br. 15 and 18) b) receiving an input from a user of the machine indicative of the user's agreement (App. Br. 15-17) and c) that if Stinson does describe such an input, the input is not received at the machine while the user is using the machine (App. Br. 16). The Examiner responds that the image of the user is the claimed electronic signature and that the user is indicating agreement by allowing an initial picture to be taken for later comparison, using the check-cashing unit and allowing the unit to take the image when cashing a check. Answer 5-8.

Turing to the first argument, we begin by construing the term "electronic signature." We note that the Specification does not provide an express definition for "electronic signature." FF 1. We give "electronic signature" the broadest reasonable construction consistent with the Specification. We construe "electronic signature" as "an electronic sound, symbol, or process attached to or associated with a contract or other record and used as the legal equivalent of a written signature." FF 2-3. We agree with the Examiner that the taking of the image of the user reads on an "electronic signature" as we have construed the term above. It is a process associated with a check that is the legal equivalent of a written signature. Further, we find that the fact that Stinson requires that the check be endorsed by writing does not preclude a finding that Stinson also requires an

electronic signature. The check cashing machine will not cash a check without a user image.

Turning to the second argument, we agree with the Examiner that allowing the check cashing machine to take an image reads on the claimed step of receiving an input from the user of the machine indicative of the user's agreement. Answer 5-8. Further, as depicted in Fig. 16C, Stinson depicts a display asking the customer to remove a hat or sunglass and to press an "OK" button before the picture is taken. FF 15. This is an input from the user of the machine indicative of the user's agreement to have their image taken.

Turning to the third argument, the Appellant argues that if Stinson does describe such an input, the input is not received at the machine while the user is using the machine. App. Br. 16. First, we note that claim 1 is silent as to when and who receives the user's input. However, as discussed above, the customer in Stinson is asked to press an "OK" button in order the image to be taken. FF 15. This is an input to the machine while the user is at the machine.

Next, in regards to the second step, the Appellant argues that Stinson does not describe the acquiring step of claim 1 occurring through operation of the claimed machine because the ATM 350 of Stinson is separate from the check cashing unit 100, which includes the camera 125 and processor 300. App. Br. 18. However, we find that the check-cashing unit 100 of Stinson to read on the claimed automated banking machine. Stinson describes that the pair of cameras 125, the processor 300, and the ATM 350 is part of the check-cashing machine. FF 9.

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 1 under §102(e) as being anticipated by Stinson.

Claims 2-5

The Appellant argues that Stinson does not describe a step of applying indicia corresponding to the at least one image to the document. App. Br. 19. In the rejection, the Examiner points to column 8, lines 11-44 of Stinson (Answer 4) and, in the Answer, states that "[a]pplying indicia corresponding to a user image to a document does not construe or imply printing the user image to a document" (Answer 9). We agree with the Examiner that "applying" is not limited to just printing but we do not find where the Examiner alternatively construed the term (Answer 9).

We give "applying" the broadest reasonable construction consistent with the specification. We note that the Specification does not provide an express definition for "applying." FF 5. We construe applying to mean laying or spreading. FF 6-9. Given this construction, we find that neither the cited portions of Stinson nor the remainder of Stinson describes that the check cashing unit lays or spread an indicia on the check. FF 18.

Accordingly, we find that the Appellant has shown that the Examiner erred in rejecting claim 2, and claims 3-5 dependent thereon, under §102(e) as being anticipated by Stinson.

Claim 6

The Appellant traverses the rejection of claim 6 for the same reasons relating to the claimed electronic signature as argued for claim 1. App. Br.

20. Accordingly, because we found them unpersuasive as to that rejection, we find them equally unpersuasive as to error in the rejection of claim 6. The Appellant has not shown that the Examiner erred in rejecting claim 6 under §102(e) as being anticipated by Stinson.

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Claim 7

The Appellant traverses the rejection of claim 7 for the same reasons relating to the claimed electronic signature as argued for claim 1. App. Br. 20. Accordingly, because we found them unpersuasive as to that rejection, we find them equally unpersuasive as to error in the rejection of claim 7. The Appellant has not shown that the Examiner erred in rejecting claim 7 under §102(e) as being anticipated by Stinson.

Claim 8

The Appellant traverses the rejection of claim 8 for the same reasons relating to the claimed electronic signature as argued for claim 1 and further, that Stinson does not describe that the image comprises an image of the iris of the user. App. Br. 20.

First, because we found the Appellant's arguments related to an electronic signature unpersuasive as to the rejection of claim 1, we find them equally unpersuasive as to error in the rejection of claim 8. Next, we find that Stinson describes that the image is a face, which would include an eye with an iris. FF 13. The Appellant has not shown that the Examiner erred in rejecting claim 8 under §102(e) as being anticipated by Stinson.

Claim 9

The Appellant traverses the rejection of claim 9 for the same reasons relating to the claimed electronic signature as argued for claim 1. App. Br. 20. Accordingly, because we found them unpersuasive as to that rejection, we find them equally unpersuasive as to error in the rejection of claim 9. The Appellant has not shown that the Examiner erred in rejecting claim 9 under §102(e) as being anticipated by Stinson.

Claim 10

The Appellant argues that Stinson does not describe a step of storing an image of the check with the image of the customer's face. App. Br. 21. However, Stinson describes that when a check-cashing unit 100 has to initiate a call to the customer service center, the processor 300 sends the customer service center server 500 a packet including the images of the front and back of the check and the image of the customer. FF 17. We find that this pack is necessarily stored in the customer service center's server 500 in order to be used. Accordingly, the Appellant has not shown that the Examiner erred in rejecting claim 10 under §102(e) as being anticipated by Stinson.

Claim 11

The Appellant argues that Stinson does not describe storing user input data in correlated relation with user image data. App. Br. 21. However, Stinson describes that when a check-cashing unit 100 has to initiate a call to the customer service center, the processor 300 sends the customer service center server 500 a packet including the customer's social security number, the check amount entered by the customer and the image of the customer.

FF 17. We find that this pack is necessarily stored in the customer service center's server 500 in order to be used. Accordingly, the Appellant has not shown that the Examiner erred in rejecting claim 10 under §102(e) as being anticipated by Stinson.

Claim 12

The Appellant argues that Stinson does not describe delivering the document from the machine to the user. App. Br. 21. However, we find that Stinson does describe returning a check to a customer. FF 12. Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 12 under §102(e) as being anticipated by Stinson.

Claim 13

The Appellant argues that Stinson does not describe storing the document in the machine. App. Br. 22. However, as discusses above, Stinson describe inserting a check into an ATM. FF 11. Further, Stinson describes ending an approved transaction without describing returning the check at the conclusion. FF 16. The check must necessarily be stored in the ATM since it was inserted and not returned. Therefore, we find that Stinson inherently describes storing the check in the ATM. Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 13 under §102(e) as being anticipated by Stinson.

Claim 14

The Appellant argues that Stinson does not describe that the document is a negotiable instrument delivered by the user to the machine. We find that

Stinson describe the customer inserting a check (*i.e.* a negotiable instrument) into the machine. FF 11. Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 13 under §102(e) as being anticipated by Stinson.

Claim 15

The Appellant argues that Stinson does not describe a user providing an input to an automated banking machine, where the user input indicates that the user's image data shall constitute an endorsement of the negotiable instruction. App. Br. 22. For the same reasons as discusses above with regards to claim 1, we find that the Appellant has not shown that the Examiner erred in rejecting claim 15 under §102(e) as being anticipated by Stinson.

Claim 16

The Appellant argues that Stinson does not describe "applying indicia corresponding to the at least one image to the document responsive to the at least one input received in step (b)." As discuses above with regards to claim 2, we find that Stinson does not describe the check cashing unit applying any indicia to the check. FF 18. Accordingly, we find that the Appellant has shown that the Examiner erred in rejecting claim 16 under §102(e) as being anticipated by Stinson.

Claim 17

Like claim 1, claim 17 recites the steps of "receiving at least one agreement from a user of the machine indicating agreement from the user

that an electronic signature of the user for purposes of providing legal effect to the document shall include data corresponding to at least one user input to the machine" and "acquiring the data corresponding to at least one user input through operation of the machine." The Appellant traverses the rejection of claim 17 for the same reasons as argued in regards to the rejection of claim 1 (App. Br. 23), and the Examiner also relies upon the same response as made in regards to claim 1 (Answer 5). Accordingly, because we found the Appellant's arguments unpersuasive with respect to claim 1, we find them equally unpersuasive with respect to claim 17. We find that the Appellant has not shown that the Examiner erred in rejecting claim 17 under §102(e) as being anticipated by Stinson.

Claim 18

The Appellant argues that Stinson does not describe a user providing an input to an automated banking machine, where the user input indicates that the user's image data shall constitute an endorsement of the negotiable instruction. App. Br. 23. For the same reasons as discusses above with regards to claim 17, we find that the Appellant has not shown that the Examiner erred in rejecting claim 18 under §102(e) as being anticipated by Stinson.

Claim 19

The Appellant argues that Stinson's check cannot be considered the claimed document for the reason previously given. App. Br. 24. For the same reasons as discusses above with regards to claims 17 and 18, we find

that the Appellant has not shown that the Examiner erred in rejecting claim 19 under §102(e) as being anticipated by Stinson.

Claim 20

Like claim 2, claim 20 recites "applying indicia corresponding to the at least one image to the check." The Appellant argued against the rejection of claim 20 for the same reason used to argue against the rejection of claim 2. (App. Br. 24). Accordingly, because we found the reason persuasive as to that rejection, we find the reason equally unpersuasive as to error in the rejection of claim 20. We find that the Appellant has shown that the Examiner erred in rejecting claim 20 under §102(e) as being anticipated by Stinson.

Claim 21

The Appellant argues that Stinson does not describe acquiring user image data through operation of the machine and storing in correlated relation both data corresponding to the user agreement input and the user image data. App. Br. 24. For the same reasons as discusses with regards to claims 1 and 11, we find that Stinson describes this limitation. We find that the Appellant has not shown that the Examiner erred in rejecting claim 21 under §102(e) as being anticipated by Stinson.

Claim 22

The Appellant argues that Stinson does not describe operating an automated banking machine to obtain image data of both a user an a document. App. Br. 24. For the same reasons as discusses with regards to

claims 1 and 10, we find that Stinson describes this limitation. We find that the Appellant has not shown that the Examiner erred in rejecting claim 21 under §102(e) as being anticipated by Stinson.

Claim 23

The Appellant argues that Stinson does not describe storing in correlated relation at least a portion of an electronic image of the document and at least a portion of the image of the user. App. Br. 24. As discusses with regards to claim 10, we find that Stinson describes this limitation. We find that the Appellant has not shown that the Examiner erred in rejecting claim 23 under §102(e) as being anticipated by Stinson.

Claim 24

The Appellant again argues that Stinson does not describe acquiring the at least one image through operation of a camera. App. Br. 25. As discusses with regards to claim 1, we find that Stinson describes this limitation. We find that the Appellant has not shown that the Examiner erred in rejecting claim 24 under §102(e) as being anticipated by Stinson.

Claim 25

The Appellant argues that Stinson does not describe acquiring the image through operation of a biometric reading device. App. Br. 25. Stinson expressly describes acquiring the image through a biometric reading device. FF 14. We find that the Appellant has not shown that the Examiner erred in rejecting claim 25 under §102(e) as being anticipated by Stinson.

Claim 26

To traverse the rejection of claim 26, the Appellant 1) incorporates arguments made in support of patentability of the previous independent claims, 2) argues that Stinson does not describe that the controller is operative to cause the output device to ask the user for agreement that image data shall constitute an electronic signature of the user for purposed of signing the document, and 3) that Stinson does not describe correlating machine-acquired user image data to be correlated with the document. App. Br. 25-26.

Turning first to the Appellant's incorporation of the arguments made in support of patentability of the previous independent claims, (App. Br. 25), because we found the Appellant's arguments unpersuasive with respect to the other independent claims, we find them equally unpersuasive with respect to claim 17.

Turning to the Appellant's argument that Stinson does not describe that the controller is operative to cause the output device to ask the user for agreement, as discusses above with regards to claim 1 (App. Br. 25), we find that the Stinson depicts in Fig. 16 asking the user to press an "OK" button before the image is taken. FF 15. We find that this depiction reads on this limitation for the same reasons as discusses with regards to the receiving step in claim 1.

Turning to the Appellant's argument that Stinson does not describe correlating machine-acquired user image data to be correlated with the document (App. Br. 25-26), as discussed above with the regards to claim 10, we find that Stinson describes this limitations.

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 26 under §102(e) as being anticipated by Stinson.

Claim 27

The Appellant argues that Stinson does not describe correlating the image data with at least one user input (App. Br. 26), as discussed above with the regards to claim 11, we find that Stinson describes this limitations. Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 27 under §102(e) as being anticipated by Stinson.

Claim 28

Like for claim 2, the Appellant argues that Stinson does not describe applying to the document an indicia corresponding to the image data. App. Br. 27. For the same reason as discusses in regards to claim 2, we find that the Appellant has shown that the Examiner erred in rejecting claim 28 under §102(e) as being anticipated by Stinson.

Claim 29

The Appellant argues that Stinson does not describe the controller being operative to store at least a portion of the image of the document in correlated relations with data corresponding to the user input. App. Br. 27. For the same reason as discusses in regards to claims 10 and 11, we find that the Appellant has not shown that the Examiner erred in rejecting claim 29.

Claim 30

The Appellant argues that Stinson does not describe the controller being operative to store at least a portion of the user image in correlated relations with data corresponding to the user input and the document image. App. Br. 27. For the same reason as discusses in regards to claims 10 and 11, we find that the Appellant has not shown that the Examiner erred in rejecting claim 30 under §102(e) as being anticipated by Stinson.

Claims 31-32

The Appellant argues that Stinson does not describe the machine including a marking device that is operative to apply to a check indicia that comprises a visual representation of a user. App. Br. 27. For the same reason as discusses in regards to claim 2, we find that the Appellant has shown that the Examiner erred in rejecting claim 31, and claim 32 dependent thereon, under §102(e) as being anticipated by Stinson.

Claim 33

The Appellant again argues that Stinson does not describe that the image acquisition device comprises a biometric reading device. App. Br. 28. For the same reason as discusses in regards to claim 25, we find that the Appellant has not shown that the Examiner erred in rejecting claim 33 under §102(e) as being anticipated by Stinson.

Claim 34

The Appellant again argues that Stinson does not describe the machine including a marking device that is operative to apply an indicia to

the check. App. Br. 28. For the same reason as discusses in regards to claim 2, we find that the Appellant has shown that the Examiner erred in rejecting claim 34 under §102(e) as being anticipated by Stinson.

Claim 35

The Appellant argues that Stinson does not describe operating the machine to produce at least one output asking if the user agrees as recited in claim 35. App. Br. 28. Claim 35 depends upon claim 1. For the same reasons as discusses above with regards to claim 26, we find that the Appellant has not shown that the Examiner erred in rejecting claim 35 under §102(e) as being anticipated by Stinson.

Claim 36

Claim 36 recites the steps of "operating the machine to receive agreement from a user that at least one image of the user constitutes a legally binding electronic signature of the user for purposes of processing the check" and "operating the machine to capture at least one user image of at least a portion of the user." The Appellant traverses the rejection of claim 36 for the same reasons as argued in regards to the rejection of claim 1 (App. Br. 28-29), and the Examiner also relies upon the same response as made in regards to claim 1 (Answer 5). Accordingly, because we found the Appellant's arguments unpersuasive with respect to claim 1, we find them equally unpersuasive with respect to claim 36. We find that the Appellant has not shown that the Examiner erred in rejecting claim 36 under §102(e) as being anticipated by Stinson.

Claim 37

Claim 37 recites subject matter which is similar to the subject matter of claim 26. The Appellant traverses the rejection of claim 37for the same reasons as argued in regards to the rejection of claim 26. (App. Br. 29-30), and the Examiner also relies upon the same response as made in regards to claim 1 (Answer 5). Accordingly, because we found the Appellant's arguments unpersuasive with respect to claim 26, we find them equally unpersuasive with respect to claim 37. We find that the Appellant has not shown that the Examiner erred in rejecting claim 37 under §102(e) as being anticipated by Stinson.

Claim 38

The Appellant again argues that Stinson does not describe correlating user identity data with the check. App. Br. 30-31. For the same reasons as discussed above with regards to claims 10 and 11, we find that the Appellant has not shown that the Examiner erred in rejecting claim 38 under §102(e) as being anticipated by Stinson.

Claim 39

The Appellant argues that for reasons previously discusses, Stinson does not describe operating the machine to produce check image data corresponding to a visual image of the check. App. Br. 31. For the same reasons as discussed above with regards to claim 10, we find that the Appellant has not shown that the Examiner erred in rejecting claim 39 under §102(e) as being anticipated by Stinson.

CONCLUSIONS OF LAW

We conclude that the Appellant has not shown that the Examiner erred in rejecting claims 1, 6-15, 17-19, 21-27, 29, 30, 33, and 35-39 under §102(e) as anticipated by Stinson.

We conclude that the Appellant has shown that the Examiner erred in rejecting claim 2-5, 16, 20, 28, 31-32, and 34 under §102(e) as being anticipated by Stinson

DECISION

The decision of the Examiner to reject claims 1, 6-15, 17-19, 21-27, 29, 30, 33, and 35-39 is affirmed and the decision of the Examiner to reject claims 2-5, 16, 20, 28, 31-32, and 34 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART

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